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Director & Deputy General Counsel

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June 20, 2018

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

**RE: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans
Docket No. 2017-370-E**

Dear Ms. Boyd:

Enclosed for filing on behalf of South Carolina Electric & Gas Company and Dominion Energy, Inc. (collectively, "Joint Applicants") in the above-referenced docket is Joint Applicants' Motion to Compel ORS's Full and Complete Response to Discovery Requests.

By copy of this letter, we are providing the other parties of record with a copy of the Joint Applicant's Motion to Compel and attach a certificate of service to that effect.

If you have any questions, please advise.

Very truly yours,

K. Chad Burgess

KCB/kms
Enclosures

cc: All Parties of Record in Docket No. 2017-370-E

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-370-E

IN RE:

Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as may be required, and for a prudency determination regarding the abandonment of the V.C. Summer Units 2 & 3 Project and associated customer benefits and cost recovery plan.

**JOINT APPLICANTS' MOTION TO
COMPEL ORS'S FULL AND
COMPLETE RESPONSE TO
DISCOVERY REQUESTS**

South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy," or, collectively with SCE&G, "Joint Applicants"), by and through the undersigned counsel and pursuant to S.C.R. Civ. P. 37 and 10 S.C. Code Ann. Regs. §§ 103-829, hereby files this Motion to Compel the Office of Regulatory Staff ("ORS") to provide full and complete responses to Joint Applicants' First Set of Interrogatories and First Requests for Production of Documents (collectively, the "Discovery Requests").¹

STATEMENT OF FACTS

Joint Applicants served ORS with their Discovery Requests on April 23, 2018. (*See generally* Ex. 1, Disc. Req.) ORS served its responses to the Discovery Requests on May 21, 2018. (*See generally* Ex. 2, ORS Disc. Resp.) It did not, however, produce any documents in response

¹ Joint Applicants' First Set of Interrogatories are also collectively referred to herein as the "Interrogatories," and Joint Applicants' First Requests for Production of Documents are collectively referred to herein as the "RFPs" or the "Requests for Production."

to the Requests for Production. Moreover, its responses to the Discovery Requests were generally inadequate and failed to satisfy ORS's discovery obligations under the South Carolina Rules of Civil Procedure.

On June 12, 2018, Joint Applicants sent ORS a letter noting a number of deficiencies in ORS's responses to the Discovery Requests and demanding that those deficiencies be remedied on or before June 18, 2018. (*See* Ex. 3, 06/12/18 Deficiency Ltr.) ORS responded to that deficiency letter on June 18, 2018. (*See* Ex. 4 06/18/18 ORS Ltr.) That response, however, did not remedy the deficiencies that Joint Applicants had identified. Joint Applicants now seek an order pursuant to Rule 37(a) compelling ORS's compliance with their discovery obligations and compelling it to provide full and complete responses to the Discovery Requests.

STANDARD OF REVIEW

The South Carolina Rules of Civil Procedure provide that a party "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." S.C.R. Civ. P. 26(b)(1); *see also Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) ("Rule 26, SCRPC, allows broad pre-trial discovery."). "Litigants and attorneys should be allowed liberal discovery." *Hodge v. Myers*, 255 S.C. 542, 548, 180 S.E.2d 203, 206 (1971). If a party fails to answer an interrogatory or request for production, or if a party's answers are evasive or incomplete, "the discovering party may move for an order compelling an answer." S.C.R. Civ. P. 37(a)(2)-(3).

Courts have broad discretion in managing discovery, including whether to grant or deny a motion to compel, and whether to impose sanctions. *See Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593 586 S.E.2d 572, 575 (2003) ("The imposition of sanctions [for discovery violations] is generally entrusted to the sound discretion of the trial judge.").

If the Court grants a motion to compel discovery, it is required to assess the non-moving party and/or that party's attorneys with the expenses and attorneys' fees incurred as a result of the motion. S.C.R. Civ. P. 37(a)(4).

ARGUMENT

I. ORS IS NOT EXEMPT FROM RESPONDING TO DISCOVERY REQUESTS. AND SHOULD BE COMPELLED TO PROVIDE FULL AND COMPLETE RESPONSES TO JOINT APPLICANTS' DISCOVERY REQUESTS.

As an initial matter, ORS has taken an unprecedented and unsupported position of claiming that it "should not be subject to fact discovery" at all. (Ex. 2, ORS Disc. Resp. at 1.) It claims that this is so because: (a) it "is not the source for the facts . . . and evidence in the proceedings; and (b) "of its unique statutory role in protecting the public interest." (*Id.*) Yet nothing in the Commission's regulations exempt ORS from responding to discovery requests. Nor has the ORS identified ~~any~~ provision of law that would exempt a state agency, like ORS, from responding to discovery. To date, ORS has also failed to explain how its "unique statutory role in protecting the public interest" precludes it from providing transparency to the parties and the public about the facts, documents, and information on which it basis its claims in this proceeding. It can be argued that a public body has a far higher duty of transparency than private entities. In fact, the Commission's regulations specifically contemplate "governmental agenc[ies]" being served with interrogatories and requests for production. *See* 10 S.C. Code Ann. Regs. § 103-833(B)-(C). Additionally, the South Carolina Rules of Civil Procedure – which govern all discovery matters not covered in Commission Regulations, S.C. Reg. § 103-835 – expressly state that a party can serve interrogatories and requests for production of documents on "any other party." S.C.R. Civ. P. 33(a), 34(a). As a party to the above-captioned action, ORS is required to respond to Joint Applicants' Discovery Requests and can be sanctioned for its failure to do so. *See* S.C.R. Civ. P. 37. Simply stated, ORS should be compelled to withdraw its baseless objection to being immune

from discovery and required to promptly provide Joint Applicants with full and complete responses to their Discovery Requests.

Furthermore, the claim that ORS is not a “source for facts” in this proceeding is simply untrue under the terms the Base Load Review Act. *See generally* S.C. Code Ann. §§ 58-33-200, *et seq.*

II. THE COMMISSION SHOULD COMPEL ORS TO PROVIDE COMPLETE RESPONSES TO JOINT APPLICANTS’ INTERROGATORIES.

In addition to being compelled to provide full and complete responses to Joint Applicants’ Discovery Requests generally, ORS should be compelled to fix three specific deficiencies with respect to its interrogatory responses.

A. The Commission Should Compel ORS to Identify the Written and Recorded Statements That Have Been Taken From Witnesses Listed in Response to Interrogatory No. 1.

Interrogatory No. 1 asks ORS to give the names and addresses of any persons known to be witnesses concerning the facts of this case *and* to “indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.” (See Ex. 1 at Interr. No. 1.) Though ORS has identified 45 different individuals in response to Interrogatory No. 1, it has not indicated whether written or recorded statements have been taken from any of them, or who has possession of such statements. (See Ex. 2 at Resp. to Interr. No. 1.) Thus, its response to Interrogatory No. 1 is incomplete pursuant to Rule 37(a)(3) of the South Carolina Rules of Civil Procedure and warrants an order compelling ORS to provide a full and complete response to Interrogatory No. 1.

B. The Commission Should Compel ORS to Provide a Full and Complete List of the Photographs, Plats, Sketches, and Other Documents Related to the Claims and Defenses in this Docket.

Interrogatory No. 3 asks ORS to “set forth a list of photographs, plats, sketches, or other Documents . . . that relate to the claims or defenses in this docket.” (See Ex. 1 at Interr. No. 3.) ORS objected to that Interrogatory on the grounds that the documents “are too voluminous to list individually,” and opted instead to “identify the sources or categories of documents” and state “where the documents can be obtained.” (See Ex. 2 at Resp. to Interr. No. 3.) Though ORS could have answered Interrogatory No. 3 by specifying the records in question, such specification must provide “sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.” S.C.R. Civ. P. 33(c). ORS’s categorical list of documents does not satisfy this requirement because ORS has not provided sufficient information to allow Joint Applicants to locate and identify the records it has requested a list of. Thus, ORS’s response to Interrogatory No. 3 is incomplete and evasive pursuant to Rule 37(a)(3) of the South Carolina Rules of Civil Procedure and warrants an order compelling ORS to provide a full and complete response to Interrogatory No. 3.

C. The Commission Should Compel ORS to Provide a Full and Complete List of All Communications Responsive Communications with ORS Since the Date of the Petition.

Interrogatory No. 7 asks ORS to provide a list of all ~~communications~~— whether written or oral — with ORS since the Petition was filed, including the names of those involved in the communications and the nature of the communication. (See Ex. 1 at Interr. No. 7.) ORS objected to Interrogatory No. 7 as being overly broad and unduly burdensome, but fails to provide *any* of the requested information with respect to that portion of Interrogatory No. 7 that it contends is not objectionable. (See Ex. 2 at Resp. to Interr. No. 7.) Certainly some of the communications that ORS has had since the Petition was filed relate to this action, would be responsive to Interrogatory

No. 7, and are not protected by the attorney-client privilege or the work product doctrine. Thus, ORS should be compelled to provide a full and complete response to Interrogatory No. 7 by providing a list of all communications, whether written or oral, with ORS since the Petition was filed that are within the scope of permissible discovery as set forth in Rule 26 of the South Carolina Rules of Civil Procedure.

III. THE COMMISSION SHOULD COMPEL ORS TO PROVIDE COMPLETE RESPONSES TO JOINT APPLICANTS' REQUESTS FOR PRODUCTION.

A number of ORS's responses to Joint Applicants' Requests for Production are similarly deficient and necessitate an order compelling ORS's compliance with its discovery obligations.

A. The Commission Should Compel ORS to Produce a Privilege Log So Joint Applicants Can Assess the Veracity of ORS's Specious Privilege Claims.

ORS responded to Request for Production Nos. 1 and 6 with a conclusory claim that its responsive documents are protected by the attorney-client privilege and/or the work product doctrine. (*See* Ex. 2 at Resp. to Request for Prod. Nos. 1, 6.) It has not, however, identified *any* documents being withheld as privileged or produced any information regarding those documents.

Pursuant to the South Carolina Rules of Civil Procedure:

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself, privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

S.C.R. Civ. P. 26(b)(5)(A) (emphasis added). Despite this requirement, ORS has yet to produce an adequate privilege log, or *any* information regarding the documents being withheld as privileged.

In this regard, Joint Applicants note that several of ORS's current and former employees in leadership positions have legal degrees, but have not been involved in legal representation of ORS

for many years. Rather, they have been involved in administrative and executive functions, and their communications conducted in that context are not subject to attorney-client privilege. SCE&G requires a log of the purportedly attorney-client privileged documents ORS is withholding to ensure that communications with these individuals are not being wrongfully claimed to be privileged

Further, at least some of ORS's privilege claims are facially specious. For example, Request for Production No. 6 asks for "[a]ll written communications with ORS or any present or former officer or employee of ORS or any intervenor in this Docket since August 1, 2017, related to SCE&G." (*See* Ex. 1 at Request for Prod. No. 6.) This request expressly seeks communications by and between non-lawyers, and with third parties. Such communications are not protected by the attorney-client privilege or the work product doctrine as a matter of law. Thus, ORS is required to produce at least some documents in its custody and control in response to Request for Production Nos. 1 and 6, and, to the extent ORS is asserting any privilege over any documents Joint Applicants have requested, it should be compelled to promptly provide a detailed privilege log of all documents and communications being withheld.

B. The Commission Should Compel ORS to Provide Full and Complete Responses to Request for Production Nos. 2, 4, and 7.

Rule 34(b) of the South Carolina Rules of Civil Procedure requires that a party's response to any request for admission state "that inspection and related activities will be permitted as requested, unless the request is objected to." S.C.R. Civ. P. 34(b). Despite this clear, well-established requirement, ORS responded to several Requests for Production by referring Joint Applicants to its prior (deficient) interrogatory responses. (*See, e.g.*, Ex. 2 at Resp. to Request for Prod. Nos. 2, 4, 7.) As ORS has not lodged any objections to Request Nos. 2, 4, or 7, it has waived any such objections and is ***required*** to produce copies of all documents responsive to Requests for

Production Nos. 2, 4, and 7. As a result of ORS's ongoing refusal to produce these documents, an order compelling compliance pursuant to Rule 37 is needed.

IV. THE COMMISSION SHOULD COMPEL ORS TO VERIFY ITS RESPONSES TO THE DISCOVERY REQUESTS.

To date, ORS has also failed to provided Joint Applicants with a verification for its responses to the Interrogatories and the Requests for Production, as required by the Commission's regulations. *See* 10 S.C. Code Ann. Reg. § 103-833(B) ("The answers [to interrogatories] are to be signed by the individual making them and subscribed by an appropriate verification."); 10 S.C. Code Ann. Reg. § 103-833(C) ("The answers [to requests for production] are to be signed by the individual making them and subscribed by an appropriate verification."); *accord* S.C.R. Civ. P. 33(a) ("Each interrogatory shall be answered separately and fully in writing under oath"). ORS's non-compliance with this basic procedural requirement warrants an order compelling its prompt compliance.

CONCLUSION

For the reasons set forth herein, Joint Applicants respectfully request that this Commission compel ORS to promptly supplement its Discovery Responses with full, complete, and verified responses to the Discovery Requests, and provide Joint Applicants with a complete production of responsive documents and a detailed privilege log regarding any documents being withheld pursuant to any privilege claim.

[SIGNATURE PAGES FOLLOWING]

Respectfully submitted,

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June 20, 2018



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Columbia, South Carolina
June 20, 2018



K. Chad Burgess
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April 23, 2018

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

**RE: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans
Docket No. 2017-370-E**

Dear Ms. Boyd:

Enclosed for filing, on behalf of South Carolina Electric & Gas Company and Dominion Energy, Inc. (collectively, "Joint Applicants") is a copy of the Joint Applicants' First Set of Discovery Requests which was served on the South Carolina Office of Regulatory Staff today.

By copy of this letter, we are serving the parties of record in the above-captioned docket with a copy of the First Set of Discovery Requests. For those parties of record who have executed the "Agreement for Electronic Service" we are serving a copy the First Set of Discovery Requests via electronic mail. For those parties of record who have not executed this agreement we are serving those parties via U.S. First Class Mail.

If you have any questions, please do not hesitate to contact us.

Very truly yours,



K. Chad Burgess

KCB/kms
Enclosures

The Honorable Jocelyn G. Boyd, Esquire
April 23, 2018
Page 2

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April 23, 2018

VIA ELECTRONIC MAIL ONLY

Shannon Bowyer Hudson, Esquire
Jeffrey M. Nelson, Esquire
Jenny R. Pittman, Esquire
South Carolina Office of Regulatory Staff
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Columbia, South Carolina 29201

**RE: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans
Docket No. 2017-370-E**

Dear Counsel:

Enclosed for service upon the South Carolina Office of Regulatory Staff ("ORS") is a copy of South Carolina Electric & Gas Company and Dominion Energy, Inc.'s First Set of Discovery Requests to the ORS.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

K. Chad Burgess

KCB/kms
Enclosures

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA
DOCKET NO. 2017-370-E

In Re: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as may be required, and for a prudence determination regarding the abandonment of the V.C. Summer Units 2 & 3 Project and associated customer benefits and cost recovery plan.

**SOUTH CAROLINA ELECTRIC & GAS
COMPANY AND DOMINION ENERGY,
INC.'S FIRST SET OF DISCOVERY
REQUESTS**

TO: JEFFREY M. NELSON, ESQ., SHANNON BOWYER HUDSON, ESQ., JENNY PITTMAN, ESQ., ATTORNEYS FOR THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF

Pursuant to 10 S.C. Code Regs. 103-833 and 103-835, Rules 33 and 34 of the South Carolina Rules of Civil Procedure, South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy") (together, "Joint Applicants"), by and through its undersigned counsel, hereby propounds the following Interrogatories and Requests for Production to the South Carolina Office of Regulatory Staff ("ORS") and requests responses in writing and under oath be served on the undersigned or before May 14, 2018. If you are unable to respond to any of the requests, or parts thereof, please specify the reason for your inability to respond and state what other knowledge or information you have concerning the unanswered portion.

DEFINITIONS AND INSTRUCTIONS

1. Joint Applicants' Interrogatories and Requests for Production to Intervenor are to be read and interpreted in accordance with the Definitions and Instructions set forth herein.

2. The terms "ORS," "you," and "your" shall mean ORS and any of its agents, employees, attorneys, accountants, consultants, and any other individual or entity associated or affiliated with ORS, purporting to act on ORS's behalf with respect to any matter at issue in the above-captioned action.

3. The term "Documents" is defined to be synonymous in meaning and equal in scope to the usage of the term in Rules 33 and 34 of the South Carolina Rules of Civil Procedure. This term encompasses all written, recorded, and stored information in your possession, under your control, available at your request, and information which can be located or discovered by reasonably diligent efforts, as well as written, recorded, and stored information in the possession of, under the control of, or available at the request of any of your agents or attorneys. The term Documents as used herein includes, without limitation, any writing or record of any kind, and includes digital data and other data (including metadata) stored on computers or other electronic devices, all writings and amendments of any kind including the originals and non-identical copies whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, all written communications, letters, emails, correspondence, memoranda, notes, records, business records, photographs, videotape or audiotape recordings, contracts, agreements, notations of telephone conversation or personal conversations, diaries, desk calendars, day-timers, to-do lists, reports, computer records, time sheets, data compilations of any type, kind or medium, and materials similar to any of the foregoing, however denominated and to whomever addressed, whether made or received by you.

4. The term "Docket" means Docket No. 2017-370-E, and/or any related docket, including but not limited to Docket No. 2017-305-E and 2017-207-E.

5. If any Document responsive to Joint Applicants' Request for Production is withheld upon a claim of privilege or any other reason, please state for each such document:

- a. The Request number to which the Document is responsive;
- b. Its title and general subject matter;
- c. Its date;
- d. Its author;
- e. The name(s) of the person(s) for whom it was prepared;
- f. The name of every person who has seen the Document;
- g. The nature of the privilege claimed or other basis for withholding; and
- h. The name and address of the person(s) presently having control, custody, or

possession of the Document.

6. If information responsive to an Interrogatory is withheld upon a claim of privilege or any other reason, please state for each such Interrogatory:

- a. Identify the Interrogatory;
- b. Provide an explanation as to why the information is privileged or is being withheld;
- c. The name(s) of the person(s) who would provide the information were it not privileged or being withheld;
- d. The name of every person who has the information requested;
- e. The nature of the privilege claimed or other basis for withholding; and
- f. The name and address of the person(s) presently having control, custody, or

possession of the information being requested.

Exhibit 1

7. If any Document responsive to Joint Applicant's Request for Production has been lost, destroyed, or otherwise discarded, please identify each lost, destroyed, or discarded Document and state:

- a. The approximate date of loss, destruction or other disposition;
- b. The reason for destruction or other disposition; and
- c. The name, current addresses, occupation, and employer of the person who lost, destroyed, or disposed of the Document.

PLEASE TAKE NOTICE that Joint Applicants will object at or prior to a hearing to any attempt by ORS to introduce evidence at any hearing which is sought by Joint Applicants' Interrogatories or First Request for Production of Documents as to which no disclosure has been made.

INTERROGATORIES

1. Please give the names and addresses of persons known to ORS or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Please provide a list of the witness names ORS intends to call and the subject matter for which each witness intends to testify at the hearing in this matter.

3. Please set forth a list of photographs, plats, sketches or other Documents in possession of ORS that relate to the claims or defenses in this docket.

4. Please list the names and addresses of any expert witnesses whom ORS proposes to use as a witness at the hearing of this Docket.

Exhibit 1

5. For each person known to ORS or counsel to be a witness concerning the facts of this Docket, set forth either a summary containing the facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

6. Please list all Documents or other evidence on which ORS intends to rely at the hearing of this Docket.

7. Please list all communications, whether written or oral, with ORS since this Petition was filed, including the names of those involved in the communication and the nature of the communication.

8. Identify each individual who answered these interrogatories.

REQUESTS FOR PRODUCTION

1. All Documents you referred to in preparing the answers to Joint Applicants' Interrogatories.

2. All photographs, videotapes, audiotapes, maps, plats, sketches, drawings, diagrams, measurements, surveys, or other Documents or material related in any way to this Docket.

3. All statements of any witnesses, including eyewitnesses or other witnesses, which are in the possession or control of ORS or ORS's attorneys, whether written or otherwise recorded, which ORS may offer into evidence as an exhibit at a hearing in this Docket.

4. All Documents, including, without limitation, any memoranda, notes, reports, correspondence, journals, diaries, photos, video and/or audio recordings, newspaper clippings or recorded print or AV media, or other tangible materials which Intervenor may offer into evidence as an exhibit at a hearing.

5. The report of any expert witness who will testify on your behalf at the hearing of this Docket.

6. All written communications with ORS or any present or former officer or employee of ORS or any intervenor in this Docket since August 1, 2017, related to SCE&G.

7. All other Documents and things that ORS intends to offer into evidence at the hearing of this Docket.

Respectfully submitted,



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Cayce, South Carolina
Date: April 23, 2018

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-370-E

IN RE:

Joint Application of South Carolina Electric & Gas)
Company and Dominion Energy, Inc. for review)
and approval of a proposed business combination)
between SCANA Corporation and Dominion)
Energy, Inc., as may be required, and for a prudency)
determination regarding the abandonment of the)
V.C. Summer Units 2 & 3 Project and associated)
customer benefits and cost recovery plans)
_____)

**CERTIFICATE OF
SERVICE**

This is to certify that I caused to be served on April 23, 2018, one (1) copy of the
South Carolina Electric & Gas Company and Dominion Energy, Incorporated's
First Set of Discovery Requests to the South Carolina Office of Regulatory Staff to
the persons named below at the addresses via electronic mail only:

Shannon Bowyer Hudson, Esquire
shudson@regstaff.sc.gov

Jeffrey M. Nelson, Esquire
jnelson@regstaff.sc.gov

Jenny R. Pittman, Esquire
jpittman@regstaff.sc.gov



Karen M. Scruggs

Cayce, South Carolina

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA
DOCKET NO. 2017-370-E**

In Re: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as may be required, and for a prudency determination regarding the abandonment of the V.C. Summer Units 2 & 3 Project and associated customer benefits and cost recovery plan.

**ORS'S ANSWERS TO
SCE&G'S AND DOMINION ENERGY'S
FIRST SET OF DISCOVERY REQUESTS**

TO: ATTORNEYS FOR SOUTH CAROLINA ELECTRIC & GAS COMPANY AND
DOMINION ENERGY, INC.:

GENERAL OBJECTION TO ORS BEING SUBJECT TO FACT DISCOVERY

ORS objects to these discovery requests because ORS is not a source for the facts of the Project, except as it presents its witnesses, expert testimony, and evidence in the proceedings; and ORS should not be subject to fact discovery because of its unique statutory role in protecting the public interest. However, based on that role and its preparation in anticipation of these proceedings, ORS may have some limited fact witnesses but only by virtue of its oversight and auditing role and other statutory functions, including ORS's preparation for and positions developed and taken in these proceedings, based on facts ORS discovers or learns from other original sources. Thus, ORS provides this information subject to, and asserting herein and reserving, its rights to object to any discovery efforts that are unreasonably cumulative, duplicative, and obtainable from other sources and that unreasonably burden, harass or hinder ORS from its preparation and presentation in these proceedings.

INTERROGATORY RESPONSES

- I. Please give the names and addresses of persons known to ORS or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response: Subject to the general objection to ORS being subject to fact discovery:

- (a) **Nanette Edwards, Esquire**
Acting Executive Director
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Attorney Edwards is the Acting Director and former Chief Counsel for ORS and knows about the BLRA and prior proceedings and communications with SCE&G, as well as actions of SCE&G, Santee Cooper, and others discovered during the oversight and auditing by ORS.

- (b) **Anthony James**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Anthony James has knowledge from construction monitoring.

- (c) **Gene Soult**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Gene Soult has knowledge from construction monitoring.

- (d) **Dawn Hipp**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Dawn Hipp has knowledge from reviewing Docket No. 2017-370-E.

- (e) **Willie Morgan**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Willie Morgan has knowledge from reviewing Docket No. 2017-370-E.

- (f) **Michael Seaman-Huynh**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Michael Seaman-Huynh has knowledge from rate design work, construction monitoring, and reviewing Docket No. 2017-370-E.

- (g) Douglas Carlisle
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.**

Douglas Carlisle has knowledge from revised rates, weighted average cost of capital calculations, and SEC/financial reviews.

- (h) Ron Aiken
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.**

Ron Aiken has knowledge from reviewing Santee Cooper documents, discovery documents, and newspaper articles.

- (i) Ryder Thompson
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.**

Ryder Thompson has knowledge from construction monitoring and from working for SCE&G at the Project site for eight years.

- (j) Jay Jashinsky
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.**

Jay Jashinsky has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (k) Daniel Sullivan
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.**

Daniel Sullivan has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (l) Gaby Smith
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.**

Gaby Smith has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (m) **Kelvin Major**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Kelvin Major has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (n) **Aisha Butler**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Aisha Butler has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (o) **Tina Seale**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Tina Seale has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (p) **Jakeyla James**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Jakeyla James has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (q) **Chad Jackson**
South Carolina Office of Regulatory Staff
c/o Wyche, P.A.

Chad Jackson has knowledge gained while working as an auditor for revised rates and pursuant to the review of Docket No. 2017-370-E.

- (r) **Dukes Scott**
Former Executive Director

Mr. Scott was the prior Executive Director of ORS and has knowledge about the BLRA and actions taken and discovered by ORS about the Project.

- (s) **Dan Arnett**
Former Chief of Staff

Mr. Arnett was the prior Chief of Staff for ORS and has knowledge about the BLRA and ORS monitoring of the Project.

- (t) **Allyn Powell**
Former ORS Employee

Ms. Powell was a prior ORS employee and has knowledge from construction monitoring.

- (u) **John Flitter**
Former ORS Employee

Mr. Flitter has knowledge from rate design work and supervising construction monitoring.

- (v) **Randy Watts**
Former ORS Employee

Mr. Watts has knowledge from rate design work.

- (w) **Leigh Ford**
Former ORS Employee

Ms. Ford has knowledge from rate design work as a former employee of ORS.

- (x) **Lynda Shafer**
Former ORS Employee

Ms. Shafer has knowledge from rate design work as a former employee of ORS.

- (y) **Stephen Williamson**
Former ORS Employee

Mr. Williamson has knowledge from rate design work as a former employee of ORS.

- (z) **Michael Cartin**
Former ORS Employee

Mr. Cartin has knowledge from rate design work as a former employee of ORS.

- (aa) **Howard Knapp**

Former ORS Employee

Mr. Knapp has knowledge from rate design work as a former employee of ORS.

- (bb) Sharon Scott
Former ORS Employee**

Ms. Scott has knowledge gained while working as an auditor on matters related to revised rates.

- (cc) Malini Gandhi
Former ORS Employee**

Ms. Gandhi has knowledge gained while working as an auditor on matters related to revised rates.

- (dd) Arnold Owino
Former ORS Employee**

Mr. Owino has knowledge gained while working as an auditor on matters related to revised rates.

- (ee) Joe Coates
Former ORS Employee**

Mr. Coates has knowledge gained while working as an auditor on matters related to revised rates.

- (ff) Stephen May
Former ORS Employee**

Mr. May has knowledge gained while working as an auditor on matters related to revised rates.

- (gg) Morgan Holland
Former ORS Employee**

Ms. Holland has knowledge gained while working as an auditor on matters related to revised rates.

- (hh) Gary C. Jones, P.E.**

**Expert Witness
Jones Partners, Ltd.
c/o Wyche. P.A.**

Mr. Jones has knowledge as a nuclear construction expert witness and gained from monitoring the construction from 2012 through the present.

- (ii) Mark Crisp, P.E.
Address Unknown**

Mr. Crisp has knowledge as a nuclear construction expert witness and gained from monitoring the Project from 2008 through 2011.

- (jj) Employees of Baker Tilly Consultants who provided expert witness services to ORS in relation to the Project including: (1) Tom Unke; and (2) Russ Hissom.**
- (kk) Employees, officers, directors, representatives, agents, and consultants of SCE&G who worked on, were involved with or provided services in connection to the Project, including: (1) Kevin Marsh; (2) Steve Byrnes; (3) Jimmy Addison; (4) Keller Kissam; (5) Ron Jones; (6) Carlette Walker; (7) Jeff Archie; (8) Ken Brown; (9) Alan Torres; (10) Kyle Young; (11) Bernie Hydrick; (12) Zach Ashcraft; (13) Abney "Skip" Smith; (14) Emily "Betty" Best (15) Shirley Johnson (16) Sheri Wicker; (17) Kevin Kochems; and (18) Al Bynum.**
- (ll) Employees, officers, directors, representatives, agents, and consultants of Santee Cooper who worked on, were involved with or provided services in connection to the Project, including: (1) Lonnie Carter; (2) Michael Crosby; and (3) Marion Cherry.**
- (mm) Employees, officers, directors, representatives, agents, and consultants of Dominion who are or have been involved with or have knowledge of Dominion's proposed purchase of SCANA Corporation.**
- (nn) Employees, officers, directors, representatives, agents, and consultants of Westinghouse Electric Corporation who worked on, were involved with or provided services in connection to the Project, including: (1) Danny Roderick; (2) Chris Levesque; (3) Carl Churchman; (4) Brian McIntyre; (5) Dan Magnarelli; (6) Terry Elam; (7) Jeff Benjamin; and (8) Jose Gutierrez.**
- (oo) Employees, officers, directors, representatives, agents, and consultants of Chicago Bridge & Iron Company who worked on, were involved with, or provided services in connection to the Project.**

- (pp) The employees, officers, directors, representatives, agents, and consultants of Bechtel Corporation who assessed the Project or provided services in relation to review of and report on the Project, including but not limited to the following: (1) Ty Troutman; (2) Craig Albert; (3) Carl Rau; (4) Richard Miller; (5) John Atwell; (6) Ronald Beck; (7) Jonathan Burstein; (8) Michael Robinson; (9) Jason Moore; (10) Robert Pedigo; (11) Jerry Pettis; (12) Edward Sherow; (13) Stephen Routh; (14) Robert Exton; and (15) George Spindle.
- (qq) The employees, officers, directors, representatives, agents, and consultants of Fluor Corporation who worked on, were involved with, or provided services in connection to the Project, including but not limited to the following: (1) Gary Flowers, Executive Vice President; and (2) Jeff Hawkins, Vice President.
- (rr) George D. Wenick, Esquire
Smith, Currie & Hancock LLP
2700 Marquis One Tower
245 Peachtree Center Avenue NE
Atlanta, GA 30303

Mr. Wenick can testify about his communications and role in the Bechtel Report and its modifications, use, and disclosure.

- (ss) All witnesses identified by any other party to this action.

Statements may include all allowable ex parte briefing presentations and testimony that was filed with the PSC, which are accessible via the Public Service Commission's website, in matters related to the BLRA or Project. The witnesses are listed with the company with which they were employed while working on the Virgil C. Summer Nuclear Generating Station Units 2 & 3 project ("the Project") and may no longer be employed by the company listed. Aside from presentations and testimony before the Public Service Commission, other state commissions, and subcommittees of the South Carolina General Assembly—~~which are also publicly available and which SCE&G and Dominion have access to or already possess~~—ORS is not in possession of written or recorded statements taken from these witnesses. To the extent interviews have been conducted by law enforcement or other government agencies, ORS is not in possession of any written or recorded statements from the interviews.

2. Please provide a list of the witness names ORS intends to call and the subject matter for which each witness intends to testify at the hearings of this matter.

Response: ORS has not yet determined which witnesses it intends to call to testify and will provide its witnesses and direct testimony when they are determined and consistent with the Rules, Regulations, and PSC's scheduling order. ORS anticipates at this time calling some of the potential witnesses listed in responses to Interrogatory Numbers 1 and 4.

3. Please set forth a list of photographs, plats, sketches, or other Documents in possession of ORS that relate to the claims or defenses in this docket.

Response: Subject to the general objection to discovery requests by the Joint Applicants, ORS responds as follows. ORS also objects to this interrogatory because the documents in this matter are too voluminous to list individually. In lieu of listing all documents that relate to the claims or defenses in this docket, ORS will identify the sources or categories of documents and either produce the non-privileged responsive documents or provide where the documents can be obtained. ORS further objects to this request on the grounds it calls for documents already in SCE&G's and Dominion's possession and which may be obtained from publicly available sources or from sources that are more convenient, less burdensome, and less expensive, which also makes this request unreasonably cumulative and duplicative.

In addition, SCE&G was a party to all past dockets and actions and has produced 75,000 pages of documents since the Petition in this matter was filed. Documents responsive to this request can be obtained from the following sources:

1. Transcripts, filings, and submissions of all prior proceedings related to the Project before the Public Service Commission of South Carolina.
2. Bechtel Report dated February 5, 2016 and all other versions, drafts, and communications relating to the Bechtel Report provided or made available to SCE&G.
3. Santee Cooper documents provided via the Freedom of Information Act to the Post & Courier and to the Governor through the Nelson Mullins Riley & Scarborough Collaborate electronic reading room.
4. Press reports about the Project, including newspaper articles from The Post & Courier and The State.
5. Documents from SCE&G or SCANA relating to the Project, including discovery responses, press releases, responses to requests from law enforcement and other government agencies, Securities and Exchange Commission filings, Quarterly Reports filed with the PSC, and invoices and other filings with the PSC.
6. Documents from Dominion, including discovery responses, press releases, public marketing and advertising materials, Securities and Exchange Commission filings, and filings made in other States about utilities.
7. Publicly available financial analyst reports.
8. Court cases related to nuclear construction or nuclear abandonment.
9. PSC orders related to other nuclear construction aside from the Project.
10. Documents publicly available on the website of ORS and PSC.
11. Documents filed with the Georgia Public Service Commission regarding the Vogtle construction project and with other state commissions regarding nuclear construction or abandonment of utility projects.
12. Documents filed or exchanged in litigation relating to the Project.
13. Documents filed in the Westinghouse bankruptcy and other proceedings involving WEC, Toshiba, Citibank, and/or others related to the Project.
14. 1983 EIA Document on Nuclear Plant Costs, which is publicly available.

15. March 2018 Bates White Analysis, which is also publicly available.
 16. Any documents relating to the Project or to other nuclear construction or abandonment produced by any other party to these proceedings in these proceedings, prior proceedings or in litigation.
4. Please list the names and addresses of any expert witness whom ORS proposes to use as a witness at the hearing of this Docket.

Response: At this time, ORS anticipates it will use the following expert witness at the hearing of this Docket:

1. Gary Jones
Jones Partners, Ltd.
1555 W. Astor Street, Suite 22 W
Chicago, IL 60610
2. J. Kennedy and Associates, Inc.
570 Colonial Park Drive, Suite 305
Roswell, GA 30075

ORS has not yet finalized which expert witnesses it will call to testify and will provide its expert witnesses and direct testimony when they are determined and consistent with the Rules, Regulations, and PSC's scheduling order.

5. For each person known to ORS or counsel to be a witness concerning the facts of this Docket, set forth either a summary containing the facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witness.

Response: Subject to ORS's general objection to discovery requests of the Joint Applicants, ORS responds as follows. ORS also objects to this interrogatory because it is overly broad, cumulative, and unduly burdensome to even summarize the facts known or observed by all witnesses to the large scope of facts relevant to this docket—and many of which SCE&G is in a better, and in some cases the only, position to know. Please see ORS' response to Interrogatory Number 1; and outside of what has been noted in response to Interrogatory Number 1, no further written or recorded statements are in the possession of ORS.

6. Please list all Documents or other evidence on which ORS intends to rely at the hearing of this Docket.

Response: ORS objects to this request because it calls for work product, and ORS and its counsel have not yet decided what exhibits they intend to introduce into evidence at the hearing aside from the Bechtel Report dated February 5, 2016 and all its versions and drafts and communications relating to them. ORS will identify exhibits prior to any

hearing and when they are determined and consistent with the Rules, Regulations, and PSC's scheduling order.

7. Please list all communications, whether written or oral, with ORS since this Petition was filed, including the names of those involved in the communications and the nature of the communication.

Response: ORS incorporates and reiterates the general objection above to discovery requests of the Joint Applicants. ORS also objects to this interrogatory because it is overly broad and unduly burdensome having been designed to harass and burden ORS because it deliberately seeks communications, mental impressions, conclusions, opinions, and legal theories concerning the litigation of ORS, its attorneys, consulting experts, and others directly assisting the preparation and development of ORS's case and presentation, which should be protected from inquiry and disclosure based on work product protections and attorney-client privilege. Moreover, it seeks information not relevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. SCE&G and Dominion are only requesting ORS communications "since this Petition was filed" and also without limiting the scope of their request even to the claims and defenses in this matter.

8. Identify each individual who answered these interrogatories.

Response: Counsel of record in these proceedings for ORS: Nanette Edwards, Shannon Hudson, Jeff Nelson, Jenny Pittman, Matthew Richardson, and Camden Massingill; and for assistance in creating the comprehensive list of witnesses to the facts, also Anthony James, Ryder Thompson, and Michael Seaman-Huynh.

REQUESTS FOR PRODUCTION**GENERAL OBJECTION TO INADVERTENT DISCLOSURE OR PROTECTED DOCUMENTS AND CLAWBACK PROVISION**

In addition to the general objection to discovery requests by the Joint Applicants, ORS does not intend by producing any documents or information to waive by production any privilege or protection associated with documents that are otherwise privileged or protected. In the event that documents ORS deems privileged or otherwise protected are produced, the production, unless otherwise expressly stated to the contrary in writing at the time of production, is inadvertent and shall be deemed to be null, void, and of no legal consequence. In addition, SCE&G's and Dominion's attorneys are directed to refrain from reading or copying any such document if they have been advised of the nature of the document by ORS, or, if they have not been so advised, are directed to refrain from reading or copying any such document beyond the point of discovery or reasonably should know of the privileged or protected nature of such document. SCE&G's and Dominion's attorneys are further directed to return each such document without making copies or divulging the contents to any person, including but not limited to SCE&G and Dominion.

No disclosure of documents or information protected by the attorney-client privilege, the work product doctrine, or any other privilege or protection from disclosure shall result in a waiver of the privilege or protection except under the circumstances provided in Federal Rule of Evidence 502. In the event of any unintentional or inadvertent disclosure of material subject to a claim of privilege or protection from disclosure, the parties agree that all paper and electronic copies of such material (including paper or electronic copies of such material provided to the receiving party's counsel, experts, consultants, or vendors) shall be destroyed or returned to the party who

produced it within ten (10) business days after receiving written notice from the producing party of the unintentional or inadvertent disclosure.

Subject to this objection and preservation of inadvertent disclosure of protected and privilege documents, ORS responds to SCE&G's and Dominion's Request for Production as follows:

RESPONSES TO REQUEST FOR PRODUCTION

1. All Documents you referred to in preparing the answers to Joint Applicants' Interrogatories.

Response: Subject to the general objection to discovery requests of the Joint Applicants, other than website and PSC docket searches, as well as a review of the Bechtel Report, for potential witnesses and addresses, all documents referred to in preparing the answers to interrogatories were attorney notes with work product and attorney-client privileged communications.

2. All photographs, videotapes, audiotapes, maps, plats, sketches, drawings, diagrams, measurements, surveys, or other Documents or material related in any way to this Docket.

Response: Please see ORS's Response to Interrogatory number 3.

3. All statements of any witnesses, including eyewitnesses or other witnesses, which are in possession or control of ORS or ORS's attorneys, whether written or otherwise recorded, which ORS may offer into evidence as an exhibit at a hearing in this Docket.

Response: Please see ORS's Response to Interrogatory numbers 1, 2, 5, and 6. ORS will identify exhibits, including statements of witnesses, and provide them as pre-filed testimony prior to any hearing and when they are determined and consistent with the Rules, Regulations, and PSC's scheduling order.

4. All Documents, including, without limitation, any memoranda, notes, reports, correspondence, journals, diaries, photos, video and/or audio recordings, newspaper, clippings or recorded print or AV media, or other tangible materials which Intervenor may offer into evidence as an exhibit at a hearing.

Response: Please see ORS's Response to Interrogatory number 6.

5. The report of any expert witness who will testify on your behalf at a hearing of this Docket.

Response: ORS objects to this request because it is overly broad and unduly burdensome because it seeks information without any limitation on issues or time and thus seeks reports not relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Past testimony or reports filed in the proceedings before the PSC related to the Project are already obtainable from the PSC or already in the possession of SCE&G. There is no report related to the testimony in this proceeding of any expert witness who will testify on behalf of ORS at this time.

6. All written communications with ORS or any present or former officer or employee of ORS or any intervenor in this Docket since August 1, 2017, related to SCE&G.

Response: ORS incorporates and reiterates the general objection above to discovery requests of the Joint Applicants. ORS also objects to this interrogatory because it is overly broad and unduly burdensome having been designed to harass and burden ORS because it deliberately seeks communications, mental impressions, conclusions, opinions, and legal theories concerning the litigation of ORS, its attorneys, consulting experts, and others directly assisting the preparation and development of ORS's case and presentation, which should be protected from inquiry and disclosure based on work product protections and attorney-client privilege and the reasonable extension of those protections based on common interests. Moreover, it seeks information not relevant to the issues in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. SCE&G and Dominion are only requesting ORS communications since the day after SCE&G announced it was completely abandoning the Project and thus seeks to reveal communications and information that include the mental impressions, conclusions, opinions, and legal theories about the development and assertion of claims and defenses in this proceeding, and also without limiting the scope of the communications to the Project, except as "related to SCE&G" which is overly broad and unduly burdensome because of ORS's roles and responsibilities.

7. All other Documents and things that ORS intends to offer into evidence at the hearing of this Docket.

Response: See Responses to Interrogatory numbers 2, 4, and 6 and to Requests for Production numbers 3, 4, and 5.

[signature page to follow]

Respectfully submitted,

s/Matthew Richardson

Matthew T. Richardson, Esquire

Wallace K. Lightsey, Esquire

Camden N. Massingill, Esquire

WYCHE, PA

801 Gervais Street, Suite B

Columbia, South Carolina 29201

Phone: (803) 254-6542

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Email: mrichardson@wyche.com

Email: wlightsey@wyche.com

Email: cmassingill@wyche.com

&

Nanette Edwards, Esquire

Jeffrey M. Nelson, Esquire

Shannon Bowyer Hudson, Esquire

Jenny R. Pittman, Esquire

OFFICE OF THE REGULATORY STAFF

1401 Main Street, Suite 900

Columbia, South Carolina 29201

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Email: jpittman@regstaff.sc.gov

**Attorneys for the South Carolina Office of
Regulatory Staff**

May 21, 2018

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA
DOCKET NO. 2017-370-E

In Re: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as may be required, and for a prudency determination regarding the abandonment of the V.C. Summer Units 2 & 3 Project and associated customer benefits and cost recovery plan.

CERTIFICATE OF SERVICE

This is to certify that I caused to be served on May 21, 2018 a copy of **ORS's Answers to SCE&G's and Dominion Energy's First Set of Discovery Requests** to the persons named below at the addresses via electronic mail only:

K. Chad Burgess
chad.burgess@scana.com
Matthew W. Gissendanner
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Belton T. Ziegler
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Elaine S. Ryan
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Attorneys for Dominion Energy, Incorporated

s/Matthew Richardson



K. Chad Burgess
Director & Deputy General Counsel

chad.burgess@scana.com

June 12, 2018

VIA ELECTRONIC AND U.S. FIRST CLASS MAIL

Matthew T. Richardson, Esquire
Wallace K. Lightsey, Esquire
Camden N. Massingill, Esquire
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Columbia, South Carolina 29201

Nanette Edwards, Esquire
Jeffrey M. Nelson, Esquire
Shannon Bowyer Hudson, Esquire
Jenny R. Pittman, Esquire
South Carolina Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201

**RE: Joint Application and Petition of South Carolina Electric & Gas
Company and Dominion Energy, Inc.
Docket No. 2017-370-E**

Dear Counsel:

We have reviewed the South Carolina Office of Regulatory Staff's ("ORS") Answers to SCE&G's and Dominion Energy's First Set of Discovery Requests (collectively, the "Requests") dated May 21, 2018, and have serious concerns regarding both ORS's failure to respond fairly and adequately to the interrogatory requests and its failure to produce a single document in response to the production requests.

As an initial matter, there is no merit to ORS's unilateral and unsupported declaration that it is immune from fact discovery in this matter. ORS is a party to these legal proceedings— in fact, it is the party that initiated Docket No. 2017-305-E – and, as such, is subject to the same discovery obligations as any other party to the litigation. There is no law or regulation that exempts ORS from responding to discovery requests. Moreover, the South Carolina Rules of Civil Procedure— which govern all discovery matters not covered in Commission Regulations, 10 S.C. Code Ann. Reg. 103-835 – expressly state that a party may serve interrogatories and requests for production of documents on "any other party." S.C.R. Civ. P. 33(a), 34(a).

(Continued . . .)

June 12, 2018

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Thus, as a party to the consolidated dockets QRS is required to respond to the Requests. If ORS does not promptly remedy the extensive deficiencies in its responses to the Requests, SCE&G and Dominion Energy will be left with no choice but to seek to compel ORS's compliance.

In addition to this global issue with ORS's responses to the Requests, we have many concerns regarding the sufficiency of ORS's responses to specific Requests and ask that ORS promptly address all of these issues by revising and supplementing ORS's responses.

I. DEFICIENCIES IN ORS'S INTERROGATORY RESPONSES.

A. Identification of Written and Recorded Statements.

Interrogatory No. 1 asks ORS to give the names and addresses of any persons known to be witnesses concerning the facts of this case and to "indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements." (Interr. No. 1.) Though ORS has identified 45 different individuals in response to Interrogatory No. 1, it has not indicated whether written or recorded statements have been taken from any of them, or who has possession of such statements. Please promptly supplement ORS's response to Interrogatory No. 1 to provide this information.

B. Identification of Photographs, Plats, Sketches, and other Documents Related to ORS's Claims.

Interrogatory No. 3 asks ORS to "set forth a list of photographs, plats, sketches, or other Documents . . . that relate to the claims or defenses in this docket." (See Interr. No. 3.) ORS objected to that Interrogatory on the grounds that the documents "are too voluminous to list individually," and opted instead to "identify the sources or categories of documents" and state "where the documents can be obtained." (Response to Interr. No. 3.) Though ORS could have answered Interrogatory No. 3 by specifying the records in question, such specification must provide "sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained." S.C.R. Civ. P. 3B(c). ORS's categorical list of documents does not satisfy this requirement because ORS has not provided sufficient information to allow SCE&G or Dominion Energy to locate and identify the records it has requested a list of. Therefore, please supplement ORS's response by providing SCE&G and Dominion Energy with a list as requested.

(Continued . . .)

June 12, 2018

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C. Identification of Communications with ORS Since Filing of the Petition.

Interrogatory No. 7 asks ORS to provide a list of all communications— whether written or oral— with ORS since the Petition was filed, including the names of those involved in the communications and the nature of the communication. (See Interr. No. 7.) ORS objected to Interrogatory No. 7 as being overly broad and unduly burdensome, but fails to provide *any* of the requested information with respect to that portion of Interrogatory No. 7 that it contends is not objectionable. ORS also objected to the request on the basis that the communications are protected by the work product doctrine and the attorney-client privilege. However, a list identifying communications with ORS is not subject to protection from disclosure for the reasons asserted. S.C.R. Civ. P. 26(b)(5)(A) specifically requires ORS to produce a list of such requested communications so as to enable SCE&G and Dominion Energy to assess the applicability of the privilege or protection. Accordingly, please immediately supplement ORS's response to Interrogatory No. 7 by providing a list of all communications, whether written or oral, with ORS since the Petition was filed that are within the scope of permissible discovery as set forth in Rule 26 of the South Carolina Rules of Civil Procedure.

D. Lack of Verification.

ORS's responses to the Interrogatories also do not appear to be verified, as required by Rule 33(a) of the South Carolina Rules of Civil Procedure. See S.C.R. Civ. P. 33(a) ("Each interrogatory shall be answered separately and fully in writing under oath . . ."). Please promptly provide such a verification for ORS's responses to SCE&G's and Dominion Energy's Interrogatories.

II. DEFICIENCIES IN ORS'S RESPONSES TO REQUESTS FOR PRODUCTION.

A. ORS Failed to Produce a Privilege Log, as Required by Law.

ORS has responded to several requests for production with conclusory claims that its documents are protected by the attorney-client privilege and/or the work product doctrine. (See Resp. to RFP Nos. 1, 6.) It has not, however, identified *any* documents being withheld as privileged or produced any information regarding those documents. Pursuant to the South Carolina Rules of Civil Procedure:

(Continued...)

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When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly *and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.*

S.C.R. Civ. P. 26(b)(5)(A) (emphasis added). Despite this requirement, ORS has yet to produce an adequate privilege log, or *any* information regarding the documents being withheld as privileged.

Further, at least some of ORS's privilege claims are facially specious. For example, Request No. 6 asks for "[a]ll written communications with ORS or any present or former officer or employee of ORS or any intervenor in this Docket since August 1, 2017, related to SCE&G." (Request No. 6.) This request expressly seeks communications by and between non-lawyers, and with third parties. Such communications are not protected by the attorney-client privilege or the work product doctrine as a matter of law.

To the extent ORS is asserting any privilege over any documents SCE&G and Dominion Energy have requested, please provide us with a detailed privilege log of all documents and communications being withheld. That log should include sufficient information so that SCE&G and Dominion Energy can ascertain the validity of ORS's privilege claim as to each document or communication.

B. ORS Cannot Satisfy Its Discovery Obligations by Responding to a Request for Production of Documents with a Reference to an Interrogatory Response in Lieu of Producing the Documents Requested.

Many of ORS's responses to the Requests simply refer SCE&G and Dominion Energy to ORS's Interrogatory responses. (See, e.g., Responses to Request Nos. 2, 4, 7.) Such responses are insufficient pursuant to Rule 34(b), which requires that any response state "that inspection and related activities will be permitted as requested, unless the request is objected to." S.C.R. Civ. P. 34(b). ORS is *required* to produce copies of all responsive documents. Please promptly produce all documents in ORS's custody or control that are responsive to Request Nos. 2, 4, and 7.

(Continued ...)

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III. SUPPLEMENTAL RESPONSES TO THE REQUESTS.

As set forth herein, ORS's responses to the Requests are woefully inadequate and do not demonstrate that ORS complied with its obligations as a party of record. Further, ORS's failure to fairly and adequately respond in writing to the interrogatory requests and its failure to cooperate in responding to the requests to produce documents impose upon ORS the immediate duty to provide corrections, revisions, and/or supplemental responses. Please consider this letter notice that, if the deficiencies set forth herein are not remedied, and if ORS does not provide us with complete and adequate responses to the Requests by **June 18, 2018**, we will be forced to move to compel ORS's responses and production of documents pursuant to S.C.R. Civ. P. 37.

Very truly yours,



K. Chad Burgess

KCB/kms

WYCHE
Post Office Box 12247
Columbia, SC 29211

June 18, 2018

K. Chad Burgess, Esquire
SCANA
220 Operations Way
Cayce, SC 29033

Re: Supplemental Response and Production of ORS
Docket No. 2017-370-E

Dear Chad,

I am writing to provide a supplemental response and production for the Joint Applicants' discovery requests. As we believe we made clear in our initial responses, we have disclosed, and will supplement as we are able, ORS's (1) witnesses, (2) exhibits, (3) experts, and (4) what the experts rely upon for their testimony. We will also produce discoverable documents from others, like those provided in load files from Santee Cooper, as they are provided to ORS and/or are kept in the ordinary course of business.

We already provided the extensive list of potential fact witnesses known at this time and will supplement and narrow that list when we know more from discovery and when we decide which witnesses we plan to call in these proceedings. We have provided you with our expert witnesses and an extensive list of documents from which exhibits are likely to be drawn. The only discoverable documents that may not already be in your possession, or directly and easily accessible, are the Santee Cooper documents provided to ORS in load files.

The Santee Cooper documents provided to ORS in load files are presently the only documents in ORS's possession that are not clearly (a) privileged and/or work product of ORS, (b) already in SCE&G's possession or (c) otherwise publicly available and known to SCE&G. There are hundreds of thousands of pages of documents contained in these load files—many of which SCE&G should have produced already in these proceedings but has not. Consistent with our discovery responses and without waiving any objections, ORS is hereby making the load files of Santee Cooper documents available for electronic copying or downloading at SCE&G's expense.

As previously stated in our discovery responses, ORS will identify exhibits and provide them when they are determined and consistent with the rules, regulations, and PSC's scheduling order. In addition, the potential witnesses and experts retained by ORS to investigate the issues being contested in Dockets 2017-370-E and 2017-305-E are still in the process of reviewing

Response Letter to K. Chad Burgess, Esquire
June 18, 2018
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documents provided by Santee Cooper and the limited information that SCE&G has provided to date. For these reasons, ORS is unable to provide supplemental responses or additional documents pertaining to opinions or conclusions of our experts or testimony and exhibits of other witnesses at this time. Last, the Interrogatories were signed and submitted by agents and employees of ORS, including its Executive Director and Chief Counsel, and we believe this satisfies the requirements of the rules and regulations in these proceedings.

Please let me know how you would like to get the load files.

Most respectfully,

A handwritten signature in blue ink that reads "Matthew Richardson". The signature is written in a cursive, flowing style.

Matthew Richardson

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-370-E

IN RE: Joint Application and Petition of South
Carolina Electric & Gas Company and
Dominion Energy, Incorporated for
Review and Approval of a Proposed
Business Combination between SCANA
Corporation and Dominion Energy,
Incorporated, as May Be Required, and
for a Prudency Determination
Regarding the Abandonment of the V.C.
Summer Units 2 & 3 Project
and Associated Customer Benefits and
Cost Recovery Plans

**CERTIFICATE OF
SERVICE**

This is to certify that I caused to be served one (1) copy of **South Carolina Electric & Gas Company and Dominion Energy, Inc.’s Motion to Compel ORS’s Full and Complete Response to Discovery Requests** to the persons named below via electronic mail only at the addresses set forth:

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Karen M. Scruggs

Cayce, South Carolina

June 20th, 2018